

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

UNITED STATES OF AMERICA,

v.

JOHN B. REILLY,

Petitioner,

CASE NO.: 2:14cv 353



Respondent.

PETITION FOR ORDER TO SHOW CAUSE

Now comes the United States Attorney, counsel for the United States of America, and petitions the Court for an Order to be directed to respondent John B. Reilly ("Respondent") to show cause why he should not comply with an administrative summons issued by the Internal Revenue Service ("IRS"). This proceeding is brought pursuant to the provisions of the Internal Revenue Code, 26 U.S.C. § 7604(a), as amended. The instant petition is made upon the following grounds:

1. Jurisdiction over this matter is conferred upon this Court by 26 U.S.C. §§ 7402 and 7604(a) and by 28 U.S.C. §§ 1340 and 1345.

2. Respondent resides at 2217 Russet Leaf Lane, Virginia Beach, Virginia 23456 and may be found within the boundaries of this judicial district.

3. Robert Ferebee is currently employed as a Revenue Officer in the Small Business/Self-Employed Division, Central Compliance Area of the Internal Revenue Service ("IRS") located at 200 Granby Street, Room 529, Norfolk, Virginia 23510. His duties and responsibilities include the collection of delinquent tax returns and delinquent tax accounts.

4. Revenue Officer Robert Ferebee is conducting an investigation for the purpose of

determining the ability of the IRS to collect the delinquent tax liability of Respondent for Form 1040 individual income taxes for the calendar years ending December 31, 2004, December 31, 2005, December 31, 2006, December 31, 2008, and December 31, 2009 as set forth in the Declaration of Revenue Officer Robert Ferebee a true and correct copy of which is attached hereto and incorporated herein as Exhibit A.

5. In his capacity as an IRS Revenue Officer, Revenue Officer Robert Ferebee is authorized to issue IRS summonses.

6. Pursuant to the above-described investigation, on February 21, 2014, Revenue Officer Robert Ferebee issued an IRS administrative summons (IRS Form 6637) to Respondent. The summons directed Respondent to appear before Revenue Officer Robert Ferebee on March 11, 2014, at 8:00 a.m. at the IRS, 200 Granby Street, Room 529, Norfolk, Virginia 23510, and to give testimony and produce for examination certain books, papers, records and other data as described in the summons. On February 21, 2014, Revenue Officer Robert Ferebee served the above-described summons on Respondent by leaving an attested copy of the summons at the last and usual place of abode of the person to whom it was directed. As required by section 7603(a) of the Internal Revenue Code, 26 U.S.C. § 7603(a), Revenue Officer Robert Ferebee signed a certificate of service of summons. A true and correct copy of the summons and certificate of service of summons is attached hereto and incorporated herein as Exhibit B.

7. The summons was issued to gather information to determine the ability of the IRS to collect Respondent's delinquent tax liability for Form 1040 individual income taxes for the calendar years ending December 31, 2004, December 31, 2005, December 31, 2006, December 31, 2008, and December 31, 2009, and, in aid of such determination, to enable the

IRS to prepare a Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals, for Respondent. A true and correct copy of Form 433-A is attached hereto as Exhibit C.

8. On March 11, 2014, Respondent failed to appear before Revenue Officer Robert Ferebee and failed to provide all testimony, records, and documents described in the summons.

9. On March 21, 2014, a second chance letter was mailed to Respondent. The second chance letter directed Respondent to appear before Revenue Officer Robert Ferebee on April 10, 2014 at 1:00 P.M. and produce the information sought by the summons. A true and correct copy of the second chance letter is attached hereto and incorporated herein as Exhibit D.

10. On April 10, 2014, Respondent failed to appear and produce all of the testimony, records, and documents described in the summons, as requested by the second chance letter.

11. As of the date of this Petition, Respondent has failed to provide the information requested in the summons.

12. The information sought from the summons will aid the IRS in determining the IRS's ability to collect Respondent's delinquent tax liability and will enable the IRS to prepare a Form 433-A, Collection Information Statement for Wage Earners and Self-Employed Individuals.

13. Except for information reported to the IRS by third parties and contained on the IRS's computer system, the testimony and documents described in the summons are not already in the possession of the IRS.

14. All administrative steps required by the Internal Revenue Code for the issuance of the IRS summons have been followed.

15. The testimony, books, records, papers, and other data sought by the summons

may be relevant or material to the IRS's investigation.

16. There is no Department of Justice criminal referral, as defined by 26 U.S.C. § 7602(d) (2), in effect with respect to John B. Reilly.

17. In order to obtain enforcement of a summons, the United States must establish that the summons: (1) is issued for a legitimate purpose; (2) seeks information relevant to that purpose; (3) seeks information that is not already within the IRS's possession; and (4) satisfies all administrative steps required by the Internal Revenue Code. *United States v. Powell*, 379 U.S. 48, 57-58 (1964).

18. The attached Declaration of Revenue Officer Robert Ferebee establishes the government's prima facie showing under *Powell*. *Alphin v. United States*, 809 F.2d 236, 238 (4th Cir. 1987).

19. Rule 4.1 of the Federal Rules of Civil Procedure provides, in pertinent part, that: "Process—other than a summons under Rule 4 or a subpoena under Rule 45—must be served by a United States marshal or deputy marshal or by a person specially appointed for that purpose." Fed. R. Civ. P. 4.1(a). Rule 4.1, however, does not specify the manner in which process is to be served. The United States requests that the Court permit this Petition for Order to Show Cause, the exhibits attached hereto and the related Order to Show Cause to be served by the United States Marshal, a Deputy United States Marshal, an Internal Revenue Officer and/or a private process server in accordance with Rule 4 of the Federal Rules of Civil Procedure.

WHEREFORE the United States of America respectfully prays as follows:

A. That this Court enter an order directing Respondent to show cause, if any, why he should not comply with and obey the aforementioned IRS summons and every

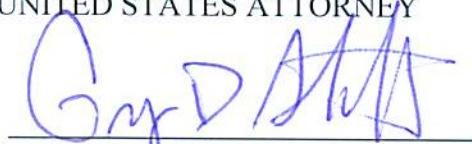
- requirement thereof;
- B. That this Court enter an order directing Respondent to fully obey the subject summons and each requirement thereof, by ordering the attendance, testimony, and production required and called for by the terms of the summons, before Revenue Officer Robert Ferebee, or any other proper officer or employee of the IRS, at such time and place as may be set by Revenue Officer Robert Ferebee or any other proper officer or employee of the IRS;
- C. That the United States of America recover its costs incurred in maintaining this proceeding; and
- D. That the Court grant such other and further relief as the Court deems proper or justice may require.

Respectfully submitted,

UNITED STATES OF AMERICA

DANA J. BOENTE
UNITED STATES ATTORNEY

By:



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